

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel, AG PROCESSING, INC., A COOPERATIVE
AND SEDALIA INDUSTRIAL ENERGY USERS ASSOCIATION, INTERVENOR;
STATE OF MISSOURI, ex rel., PUBLIC COUNSEL, APPELLANT**

v.

**PUBLIC SERVICE COMMISSION FOR THE STATE OF MISSOURI, RESPONDENT
KCP&L GREATER MISSOURI OPERATIONS CO., RESPONDENT**

DOCKET NUMBER WD70799

DATE: MARCH 23, 2010

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Richard G. Callahan, Judge

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard and James E. Welsh, JJ.

Attorneys:

Lewis R. Mills, Jr., for Appellant

Jamie N. Ott, for Respondent PSC

Karl Zobrist, for Respondent KCP&L

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel, AG PROCESSING, INC., A COOPERATIVE AND
SEDALIA INDUSTRIAL ENERGY USERS ASSOCIATION, INTERVENOR; STATE OF
MISSOURI, ex rel., PUBLIC COUNSEL, APPELLANT**

v.

**PUBLIC SERVICE COMMISSION FOR THE STATE OF MISSOURI, RESPONDENT
KCP&L GREATER MISSOURI OPERATIONS CO., RESPONDENT**

WD70799

Cole County, Missouri

Before Division Two Judges: Joseph M. Ellis, P.J., Victor C. Howard and James E. Welsh, JJ.

The Office of Public Counsel, AG Processing, Inc., and the Sedalia Industrial Energy Users' Association appeal the circuit court's judgment affirming a decision of the Public Service Commission approving certain tariffs filed by KCP&L Greater Missouri Operations Company (formerly known, and referenced herein, as Aquila, Inc.).

REVERSED AND REMANDED.

Division Two holds:

1. The Public Service Commission's May 17, 2007 Order, simply announcing that it would, in the future, approve rate schedules submitted by Aquila that utilized a fuel adjustment clause, provided certain criteria were met, was not specific enough to allow customers to calculate how much they would be paying as a result of the fuel adjustment clause and did not specify the date on which the fuel adjustment clause would begin to apply to fuel consumed by Aquila customers.
2. The Public Service Commission's May 31 and June 14, 2007 Orders rejecting Aquila's proposed fuel adjustment clause tariffs, did not reference a start date for fuel adjustments to begin and, until the rate schedules were adopted by the Commission, Aquila customers had no means of calculating how much their electrical use would cost them by way of the fuel adjustment clause or any notice of when such a fuel adjustment clause would begin to apply.
3. The tariffs containing the fuel adjustment clause were not approved by the Public Service Commission until June 29, 2007, and did not become effective per the Commission's order until July 5th. Thus, any adjustment to the cost of electricity based on electricity that had already been consumed by Aquila customers prior to the effective date of constituted retroactive ratemaking under section 386.266, RSMo Cum. Supp. 2005.

Opinion by: Joseph M. Ellis, Judge

Date: March 23, 2010

This summary is <i>UNOFFICIAL</i> and should not be quoted or cited.
--